

DISTRICT OF COLUMBIA
DOH Office of Adjudication and Hearings
825 North Capitol Street N.E., Suite 5100
Washington D.C. 20002

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

LINDA BYRD
Respondent

Case No.: A-01-80075

FINAL ORDER

I. Introduction

On June 29, 2001, this administrative court received the Government's request to convene a hearing pursuant to the District of Columbia's Dangerous Dog statute.¹ *See* D.C. Code §§ 6-1021, *et seq.* The purpose of this hearing would be to determine whether three dogs ("Champ," "Remy," and "Sade") owned² by Respondent Linda Byrd, are "dangerous dogs" as

¹ This administrative court has jurisdiction over this matter pursuant to Reorganization Plan No. 4 of 1996, Mayor's Order Nos. 97-42, 99-68, and 00-98 and Department of Health Organizational Order Nos. 99-24 and 01-26.

² During these proceedings, Respondent stated that, while her son owned the three dogs at issue, she is listed as owner on some of the dogs' licensing and vaccination papers. *See* Respondent's Exhibits 205, 206, 207, 210, 211, 212 ("RX-205, RX-206, RX-207, RX-210, RX-211, RX-212"). Moreover, her son resides with her and the dogs at 1617 Lawrence Street, N.E. *Compare* RX-210 *with* RX-211. Because an "owner" for purposes of the District of Columbia's Dangerous Dog statute is defined as "any person, firm, corporation, organization, or department possessing, harboring, keeping, having an interest in, or having control or custody of a dog," I conclude that Respondent satisfies the definition of an "owner" under the statute. D.C. Code § 6-1021.1(4). Accordingly, I find that Respondent is the owner of the dogs for all purposes relevant to these proceedings.

defined in D.C. Code § 6-1021.1 and, if so, whether each of the dogs would constitute a significant threat to public health and safety if returned to Respondent. If both of these inquiries are answered in the affirmative, the Government would be authorized to humanely destroy the dogs in accordance with D.C. Code § 6-1021.3.

By order dated June 29, 2001, I scheduled a telephone status conference in this matter for July 6, 2001 and, pursuant to the requirements of D.C. Code § 6-1021.2(c), set a hearing date of July 16, 2001. At the July 6th status conference, Thomas Collier, Esq., entered an appearance on behalf of the Government, and Josseline Saint-Preux, Esq., entered an appearance on behalf of Respondent.

On July 9, 2001, I issued an Order requiring the parties to submit on or before Noon on July 13, 2001 a “Joint Proposed Pre-Trial Order” listing, among other things, all witnesses and exhibits the parties expected to present at trial, as well as all objections thereto.³ After the submission deadline passed on July 13, 2001 with no Joint Proposed Pre-Trial Order filed by the parties and no witness list or documentary evidence filed by Respondent, I attempted to convene a status conference on the afternoon of July 13, 2001, but Respondent’s counsel was not available.

Subsequently, on July 14, 2001, Respondent’s counsel submitted a motion to withdraw his appearance. In support of the motion, Respondent’s counsel stated that, on July 13, 2001, Respondent discharged him and requested all files relating to the representation. Respondent’s

³ On July 13, 2001, the Government submitted its list of proposed witnesses and documents to be introduced at the hearing.

counsel represented that all files had been turned over to Respondent. Pursuant to Rule 1.16(a)(3) of the District of Columbia Rules of Professional Conduct, and for good cause shown, I granted Respondent's counsel's motion to withdraw.⁴

The hearing convened as scheduled on July 16, 2001. Respondent confirmed at the start of the hearing that she had discharged her counsel on July 13, 2001. Respondent elected to proceed without counsel, but requested that a family acquaintance, Virgil Thompson, assist her in a lay capacity during the hearing.⁵ After due consideration, and in an exercise of this administrative court's discretion, I granted Respondent's request. *See Ramos v. District of Columbia Dep't of Consumer and Regulatory Affairs*, 601 A.2d 1069, 1073-74 (D.C. 1992) (recognizing the inherent discretionary power of administrative tribunals to regulate the parties and proceedings before them); *Bookens v. Committee on Unauthorized Practice of Law*, 538 A.2d 1120, 1127 (D.C. 1988) (lay assistance and representation before District of Columbia agencies may be authorized by the presiding officer consistent with the D.C. Administrative Procedure Act).

The Government put forth the following witnesses: Helen Whitney Watriss, who was allegedly attacked by one or more of Respondent's dogs, testified about the alleged attack and the resulting injuries she suffered; Margaret Cutino, whose male dog "Cho-Cho" was also

⁴ Rule 1.16(a)(3) of the District of Columbia Rules of Professional Conduct provides: (a) Except as stated in paragraph (c), a lawyer shall not represented a client or, where representation has commenced, shall withdraw from the representation of a client if . . . (3) The lawyer is discharged."

⁵ At the hearing, Mr. Thompson stated that he is not an attorney, and was not attempting to appear in this matter as such.

allegedly attacked by one or more of Respondent's dogs, testified about her dog's injuries and demeanor after the alleged attack; and Peggy Keller, Chief of the Animal Disease Control Section of the D.C. Department of Health, authenticated certain documents offered by the Government relating to the alleged attack and impoundment. The Government offered seven previously submitted exhibits, Petitioner's Exhibits 100-106 ("PX-100, PX-101, PX-102, PX-103, PX-104, PX-105 and PX-106") which were admitted into evidence. In addition, the Government offered two photographs at the hearing, Petitioner's Exhibits 107-108 ("PX-107 and PX-108") which were admitted without substantive objection. Respondent testified on her own behalf and also called her son Adrian Byrd to testify. At the hearing, Respondent offered RX-203 which was admitted into evidence.⁶

At the close of the hearing, I held the record open until July 25, 2001 specifically to allow Respondent the opportunity to submit additional evidence regarding her ability to comply with the requirements of D.C. Code § 6-1021.4 for each of the three dogs at issue in the event that any of them is declared to be a dangerous dog. *See* OAH Order (July 18, 2001). The Government

⁶ At the start of the hearing, Respondent submitted a stapled set of various documents, which were marked in the aggregate as RX-200 (except for RX-203 specifically identified therein) and were to be introduced at trial. Respondent also submitted a statement from Simone Missouri, marked as RX-201, as well as a series of photographs of Respondent's yard (taken after the alleged incident) marked as RX-202. I advised the parties that Respondent's submissions on the day of the hearing contravened my order of July 9, 2001 that required any such submissions to be filed and served no later than July 13, 2001. The Government represented that it would withhold its objections, if any, to these submission until each of the documents was introduced by Respondent during the course of the hearing. Recognizing that Respondent was proceeding *pro se*, I specifically admonished the parties at the hearing that only those documents the parties formally introduced into evidence and ruled admissible could be considered by me in the disposition of this case. The only document Respondent formally introduced into evidence at the hearing was RX-203 which, over the Government's objection as to relevance, was admitted. As a result, it is not necessary for me to rule on any defects in timeliness connected with Respondent's Exhibits 200, 201 and 202.

was permitted to file any objections to Respondent's submissions by July 27, 2001, after which time the record would close.

On July 25, 2001, Respondent submitted RX-204-212 in response to the July 18th Order. The deadline for objections by the Government having passed, the hearing record was closed on July 28, 2001. The statute requires a decision to be reached within five (5) days after the close of the hearing. This decision has been issued in accordance with that requirement, excluding the intervening weekend days.

II. Findings of Fact

Based upon the testimony of all the witnesses, my evaluation of their credibility, the documents admitted into evidence, and the entire record in this matter, I now make the following findings of fact:

Respondent resides at 1617 Lawrence Street, N.E. PX-100, RX-203. Respondent's son, Adrian, also resides at the 1617 Lawrence Street address. RX-203. Respondent is the owner of three dogs at issue in these proceedings: (1) "Champ," a 2 year-old male pit bull-type dog who is brown/brindle in color; (2) "Remy" a 3 year-old female pit bull-type dog who is black/brindle in color; and (3) "Sade" an 11 month-old female pit bull-type dog who is black and white in color.⁷ See RX-204, RX-205, RX-210, RX-211.

⁷ During the course of these proceedings, reference was also made to another pit bull-type dog owned by Respondent named "Diamond." RX-209. The Government has elected not to seek to have Diamond declared a dangerous dog at this time.

A. The June 9th Incident

At approximately 9:15 AM on Saturday, June 9, 2001, Ms. Watriss was walking her dog “Juno” and “Cho-Cho,” a dog owned by her neighbor, Ms. Cutino, through an alley bordered by 16th Street N.E. to the west and 17th Streets N.E. to the east, and Lawrence Street, N.E. to the north and Kearney Street, N.E. to the south.⁸ PX-100, PX-106. Ms. Watriss and the two dogs walked in front of the area in the alley behind Respondent’s residence. Although Respondent has a gated fence abutting the alley, the gate was partially open that morning because Respondent’s son had been emptying the trash earlier that day.

1. Ms. Watriss’s Version of the June 9th Incident

There is conflicting evidence in the record as to what occurred as Ms. Watriss walked toward the area of the alley in front of Respondent’s fence.⁹ According to Ms. Watriss, two pit bull-type dogs, both white with spots, came running through Respondent’s open gate, stopped and sniffed at Cho-Cho, and then began attacking him. Ms. Watriss’s dog, Juno, ran away from the altercation further down the alley. Ms. Watriss stated that she then picked up Cho-Cho with the idea of possibly tossing him over a neighbor’s fence for safety.

⁸ In her written statement as to the events surrounding this incident, Ms. Watriss states that the alleged attack occurred on Saturday, June 12, 2001. PX-106. According to the Animal Bite Report submitted by the Government, however, the alleged attack occurred on June 9, 2001. PX-100. Moreover, June 9, 2001 was a Saturday, while June 12, 2001 was a Tuesday. I find that Ms. Watriss’s statement was incorrect insofar as the date of the incident, but is accurate in that the incident occurred on a Saturday morning.

⁹ Ms. Watriss states that her dog, Juno, was not on a leash, but Cho-Cho was on a leash.

Ms. Watriss testified that, as she was holding Cho-Cho and determining what next to do, two more pit bull-type dogs came out of Respondent's yard and immediately began attacking him.¹⁰ Ms. Watriss states that she thinks she may have dropped Cho-Cho at that time onto the ground, and all of the dogs were fighting. Ms. Watriss repeatedly shouted to an unidentified woman wearing yellow clothing¹¹ in Respondent's yard, words to the effect of "Come and get the dogs!" The unidentified woman, however, did not appear to respond. Ms. Watriss, continuing to attempt to extricate Cho-Cho from the fighting dogs, became aware that she had been bitten on her left hand and on her right lower leg, but could not identify whether her neighbor's dog, Cho-Cho, had bitten her or which, if any of Respondent's dogs had bitten her. Based on the position of the dogs around her, however, Ms. Watriss felt certain that Cho-Cho did not bite her. PX-106, PX-107, PX-108.

Ms. Watriss stated that, a few minutes later, Respondent's son, Adrian, attempted to separate the dogs, by throwing one of the dogs back into Respondent's yard. Ms. Watriss was uncertain, however, as to how the three other pit bull-type dogs were separated from Cho-Cho and placed back into Respondent's yard, as her attention was diverted to her injuries. Ms. Watriss stated that Cho-Cho apparently ran home after the incident. Neighbors called an ambulance for Ms. Watriss, and she was treated for her injuries on the scene and at Providence Hospital.

¹⁰ Ms. Watriss was uncertain of the color of second set of pit bull-type dogs, although she testified that she believed all of the dogs had been white with spots.

¹¹ Respondent testified she was wearing yellow clothing on the morning of the June 9th incident.

2. Respondent's Version of the June 9th Incident

On the morning of June 9, 2001, a fight ensued between Cho-Cho and Respondent's dog, Champ, inside Respondent's yard on Respondent's driveway. Cho-Cho was not on a leash. Respondent's dogs, Remy and Sade, were also in the yard at that time a few feet away from the fight between Cho-Cho and Champ. Remy and Sade were barking, but did not participate in the fight. Ms. Watriss then entered Respondent's yard where the dogs were fighting at that time, and began to beat and pull at the dogs in an attempt to place a leash on Cho-Cho, presumably to extricate Cho-Cho from the fight. Respondent's son told Ms. Watriss to leave the dogs alone so that he could separate the dogs. Ms. Watriss discontinued her attempts to extricate Cho-Cho, and Respondent's son was able to separate the dogs by throwing Champ over Respondent's fence, pushing Cho-Cho away from gate, and then closing the gate.

3. Analysis and Findings

While I certainly do not find all of Ms. Watriss's testimony to be incredible, some of her material perceptions on the day of the incident are inconsistent with documentary evidence proffered by the Government. For example, Ms. Watriss testified that she believed all four of the pit bull-type dogs that attacked her and Cho-Cho on June 9th were white with spots, although she was most certain that the first two pit bull-type dogs that came out of Respondent's yard had that coloring. *See* PX-106. However, in the Government's June 9, 2001 Animal Bite Report taken for Ms. Watriss, the attacking dogs are described as being brown/brindle in color (Champ) and

black/bindle in color (Remy). PX-101; *see also* PX-100, PX-105. Respondent's dog, Sade, has been described as black and white.¹² RX-205. Because the Government offered no photographs of the dogs into evidence, I am left with generalized written descriptions of Respondent's dogs contained elsewhere in the record for purposes of corroboration of the Government's case. *See* PX-100, PX-101, PX-105, RX-204, RX-205, RX-210, RX-211. These written descriptions of the three dogs at issue in these proceedings are, however, facially inconsistent with those of Ms. Watriss.¹³

In addition, Ms. Watriss testified that four pit bull-type dogs were involved in the incident. While the June 9, 2001 Animal Bite Report taken for Ms. Cutino references four dogs in the "Biting Animal Information" section of the report, that section of the report taken for Ms. Watriss only references two dogs, Remy and Champ.¹⁴ *Compare* PX-100 with PX-101 and PX-105. I find this apparent inconsistency to be material given that Ms. Watriss has testified that she could not identify which of the alleged five dogs (including Cho-Cho) fighting about her person bit her on the morning of June 9th. PX-106. Moreover, the Government presented no evidence at the hearing to explain such an apparent inconsistency.

¹² Respondent's dog, Diamond, who is not the subject of these proceedings, is described in the animal bite report as white/black. PX-100.

¹³ The importance of such inconsistencies regarding the dogs' descriptions are heightened by the apparent existence of other pit bull-type dogs in the neighborhood running at large, but not owned by Respondent. RX-203.

¹⁴ The Animal Bite Report taken for Ms. Watriss has a notation for Respondent's dogs Diamond and Sade, but it is to the right of the "Quarantine" section of the report, and is not near the "Biting Animal Information" section. PX-101. The Government failed to present any evidence to explain the nature of this notation, however.

In contrast to the material inconsistencies reflected in Ms. Watriss's testimony, there is nothing in the record undermining Respondent's credibility or that of her son on issues material to these proceedings.¹⁵ In essence, therefore, I am left with three eye-witness versions of an incident in the record, one of which is materially inconsistent with the other two on certain key aspects of the incident, and, at least with respect to the description and number of dogs at issue, is also inconsistent with unimpeached documentary evidence contained in the record.

Based on the evidence presented, the Government has not met its statutorily mandated burden of proof in this case. *See* D.C. Code § 1-1509. Accordingly, on this record I find that, on the morning of June 9, 2001, Ms. Watriss was walking her dog, Juno, and her neighbor's dog, Cho-Cho, both without a leash, when Cho-Cho wandered through Respondent's partially opened gate and entered Respondent's yard.¹⁶ At that time, Respondent's dog, Champ, and Cho-Cho began sniffing and barking at each other. A fight between Champ and Cho-Cho ensued on

¹⁵ There are apparent inconsistencies between Respondent's testimony and that of her son. For example, Respondent estimated that, during the fight between Cho-Cho and Champ, Remy and Sade were approximately twenty (20) feet away. Respondent's son estimated the difference to be approximately five (5) feet. I do not find such an inconsistency to be material. The material issue is whether or not Remy and Sade participated in the fight, and Respondent's and her son's testimony is consistent on that issue.

¹⁶ In the District of Columbia, it is unlawful to walk a dog without a leash in a public space. For example, 24 DCMR 900.3 provides: "No person owning, keeping, or having custody of a dog in the District shall permit the dog to be on any public space in the District, unless the dog is firmly secured by a substantial leash. The leash shall be held by a person capable of managing the dog." *See also* D.C. Code § 6-1008(a) (prohibiting owners from allowing their animals to go "at large"); D.C. Code § 6-1001(1) (defining an animal at large as "any animal found off the premises of its owner and neither leashed nor otherwise under the immediate control of a person capable of physically restraining it").

Respondent's driveway inside the yard. Neither Ms. Watriss's dog Juno, nor Respondent's dogs Remy or Sade, participated in this fight.

At some point, the fight shifted away from Respondent's driveway and into the alley. Ms. Watriss, in an attempt to place a leash on Cho-Cho and extricate him from the fight, was bitten by either Champ, Cho-Cho or both. None of the three eye-witnesses who testified at the hearing could identify which dog bit Ms. Watriss, and, based on this record, I can make no finding as to which dog bit her. Respondent's son ultimately was able to separate the dogs by throwing Champ over Respondent's fence back into Respondent's yard, pushing Cho-Cho away from Respondent's gate, and closing the gate. Once outside the gate, Cho-Cho ran from the scene of the incident.¹⁷ Neighbors, including Respondent, called an ambulance for Ms. Watriss, and, after being treated on the scene, she was transported to Providence Hospital.

D.C. Animal Control impounded Champ and Remy on June 11, 2001.¹⁸ Sade remains at Respondent's residence.

¹⁷ At the hearing, Ms. Cutino, Cho-Cho's owner, described his injuries immediately after the incident, which included superficial bite wounds and one deeper wound on his right front paw. Since it is unlikely that Cho-Cho visited these wounds on himself, I find that Champ caused Cho-Cho's injuries.

¹⁸ While there is no evidence in the record that the Government obtained a search warrant pursuant to D.C. Code § 6-1021.2(b) prior to impounding Respondent's dogs, Respondent has not contested the lawfulness of the impoundment procedure in these proceedings. *See* SCR-Civil Rule 204.

III. Conclusions of Law

Is each of the Respondent's Dogs a "Dangerous Dog" under D.C. Code § 6-1021.1?

At the hearing, the Government stated that it would establish by a preponderance of the evidence that each of Respondent's dogs at issue (Champ, Remy and Sade) is a dangerous dog under D.C. Code § 6-1021.1(1)(A)(i) which provides that a "dangerous dog" means any dog that: "(i) Has bitten or attacked a person or domestic animal without provocation" Because the Government has failed to meet its statutory burden of proof in that it did not prove that Respondent's dogs, Remy and Sade, even participated in the June 9, 2001 incident, I conclude as a matter of law that Remy and Sade cannot be found to meet the statutory definition of a dangerous dog.

Based upon the testimony of Respondent and her son, however, Respondent's dog Champ was involved in the June 9, 2001 incident. Moreover, although there is no evidence in the record as to whether Ms. Watriss was bitten by Champ, Cho-Cho or both dogs, I credit Ms. Cutino's testimony that Cho-Cho received superficial bite wounds and a deeper wound on his right front paw, and, as discussed above, have found that Champ was the source of Cho-Cho's injuries. Under the dangerous dog statute, such a finding is sufficient to establish that Champ is a dangerous dog, so long as the bite was "without provocation." See D.C. Code § 6-1021.1(1)(A)(i).

I conclude that the Government has failed to prove by a preponderance of the evidence that Champ bit or attacked Cho-Cho without provocation. The evidence establishes that Cho-Cho entered Respondent's yard while unleashed through an open gate. Moreover, while the evidence does not establish which dog initiated the fight, both Champ and Cho-Cho appear to have been equally engaged, as is demonstrated by the witnesses' consistent testimony regarding the difficulty in separating the dogs.¹⁹ Provocation simply cannot be gleaned from such apparent mutual combat. *Cf. DOH v. Long*, OAH No. A-01-80056 (Final Order, July 9, 2001) (actions of victim control determination of provocation under the dangerous dog statute). I cannot conclude on the evidence presented by the Government, therefore, that Cho-Cho was bitten or attacked by Champ without provocation and, as a result, cannot conclude that Champ is a dangerous dog for purposes of the dangerous dog statute.²⁰

IV. Order

Based upon the above findings of fact and conclusions of law, and the entire record in this matter, it is, this _____ day of _____, 2001:

ORDERED, that the Government has not introduced sufficient evidence to prove that "Champ," a dog owned by Respondent Linda Byrd, satisfies the definition of a dangerous dog.

¹⁹ This testimony also undercuts the Government's theory that, due to Cho-Cho's 14 1/2 year-old age and developing arthritic condition as described by Ms. Cutino, it would be unlikely for him to have provoked the June 9th incident.

²⁰ Because I do not conclude that Respondent's dogs at issue herein are dangerous dogs under the statute, I need not determine whether their return to Respondent would constitute a significant threat to public health and safety. *See* D.C. Code § 6-1021.2.

Therefore, the dangerous dog statute, D.C. Code § 6-1021, *et seq.*, does not authorize the Government to retain custody of “Champ”; and it is further

ORDERED, that the Government has not introduced sufficient evidence to prove that “Remy”, a dog owned by Respondent Linda Byrd, satisfies the definition of a dangerous dog. Therefore, the dangerous dog statute, D.C. Code § 6-1021, *et seq.*, does not authorize the Government to retain custody of “Remy” and it is further

ORDERED, that the Government has not introduced sufficient evidence to prove that “Sade”, a dog owned by Respondent Linda Byrd, satisfies the definition of a dangerous dog. Therefore, the dangerous dog statute, D.C. Code § 6-1021, *et seq.*, does not authorize the Government to obtain or retain custody of “Sade”; and it is further

ORDERED, that the Government shall release Respondent’s dogs “Champ” and “Remy” to Respondent in a manner consistent with District of Columbia law.

/s/ **8/3/01**

Mark D. Poindexter
Administrative Judge